IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.943 of 2001
(Old No.1081 of 1999)

Bal Kishan alias Bal Krishna,
S/o Bhogi Rlam R/o Aalu Padav,
Mallital, Nainital, District Nainital

...Appellant

Versus

1. State
2. Abdul Rajjak S/o Abdul Salam,
R/o Chartan Lodge, Near B.D. Pandey Hospital
(Back) Mallital, Nainital, District Nainital

... Opposite Parties

Dated: May 18 , 2007

Sri R.S. Bisht, learned amicus curiae for the appellant
Sri Amit Bhatt, learned Additional G.A. for the State

HON. DHARAM VEER, J.

This appeal has been preferred under Section 341 of Code of Criminal Procedure *(hereinafter to be referred as Cr.P.C.)* against the judgment and order dated 18.3.1999 passed by District Judge, Nainital in Civil Appeal No. 106 of 1997, whereby the learned District Judge has passed an order to register a case against the appellant after complying with the procedure Section 340 Cr.P.C. on the basis of the forged documents.

2. Brief facts of the case are that one Abdul Razzaq had filed a suit before Civil Judge (Junior Division) Nainital which was registered as civil Suit No.83 of 1991, Abdul Razzaq Vs. Bal Kishan. In that case, the appellant/opposite party No.2 had filed certain documents Paper No. 137-C/2 to 141-C. The learned Civil Judge (Junior Division) after perusing the material available on record vide his judgment and order dated

03.12.1997 decreed the suit in favour of the plaintiff and against the defendant/ appellant and held that plaintiff is in continuous possession over the land in dispute since last 10 years. Being aggrieved by the said judgment and order dated 03.12.1997, the defendant/appellant went in appeal before learned district Judge, Nainital. The learned District Judge, Nainital vide his judgment and order dated 18.3.1999 has recorded a categorical finding that the appellant was in habit of fabricating the false documents and for this reason, the learned District Judge, Nainital has directed to register a criminal case against the appellant after holding a proper enquiry. The learned District Judge, Nainital has also directed that the procedure of Section 340 Cr.P.C. would be followed and thereafter a case shall be registered against the appellant. Feeling aggrieved against the judgment and order dated 18.3.1999, the appellant has come up in appeal before this Court.

3 I have heard Sri R.S. Bisht, learned amicus curiae for the appellant and Sri Amit Bhatt, learned Additional G.A. for the State.

4. Sri Amit Bhatt, learned Addl. G.A. for the State argued that in such a case where the complaint has not been filed, the appeal u/s 341 of Cr.P.c. is not maintainable. He further argued that in the present case also, no complaint has been filed, hence the present appeal is not maintainable. Section 341 of Cr.P.C. is relevant to mention here which reads as under:-

> *341. Appeal- (1) any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-*

section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

5. It is not clear from the evidence on record that any complaint has been filed against the appellant which is an obligatory requirement as provided in Section 341 of the Cr.P.C. quoted above, Furthermore, the learned district Judge has directed that in respect of the forged documents filed by the appellant, a separate case u/s 340 Cr.P.C. shall be registered for holding a proper enquiry. The appellant can prove the genuineness of the documents referred above filed by him in the trial before the Magistrate concerned if any complaint is filed against him.

6. In view of the above, I do not find any irregularity or illegality in the judgment and order dated 18.3.1999 passed by learned district Judge. The appeal is devoid of merit and is accordingly dismissed.

(Dharam Veer. J.)

Rajeev Dang